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**LEGAL PROCESS, PROFESSIONALISM &  
ETHICS  
(SECTION BB)**

**FALL 2012**

**Professor Simon Stern**

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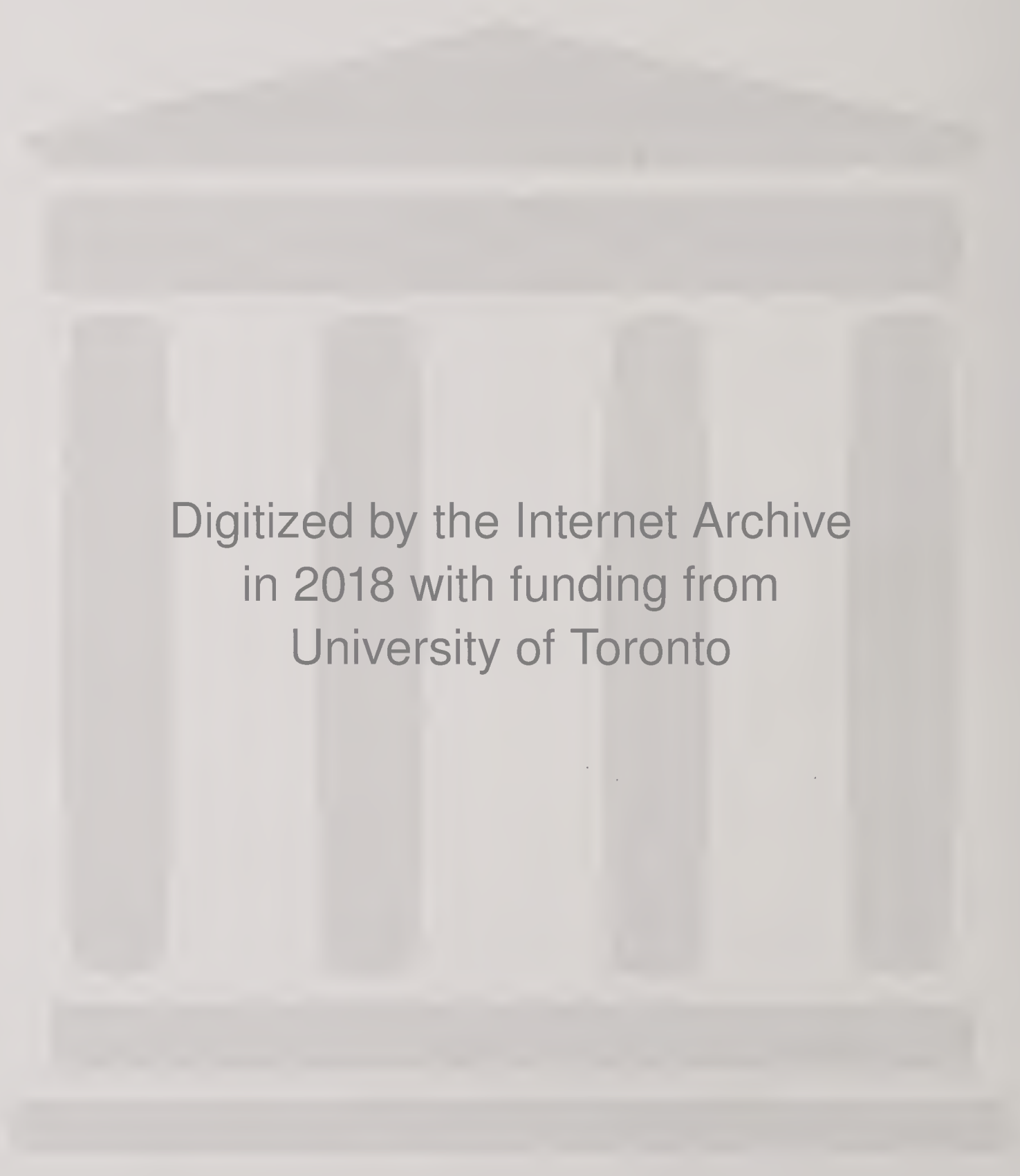


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UNIVERSITY OF TORONTO FACULTY OF LAW

LEGAL PROCESS (SECTION BB)

FLC, Mon. & Weds., 2:10 – 3:25

FALL 2012

Professor Simon Stern

Office hours: by appointment, Tues. 3 - 5

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**A. INTRODUCTION**

**1. COURSE DESCRIPTION**

This course provides an introduction to civil legal process. After a short introduction to the legal system, pleadings, and some theories of procedure, we will consider the rules, statutes, and common-law doctrines governing parties and proceedings in three stages. First we will discuss the grounds on which parties and claims may be heard or excluded as a threshold matter. This section of the course deals with standing, justiciability, intervention, limitation periods, and relitigation. Next, we will discuss strategic interaction in the course of litigation. This section of the course deals with jurisdiction, preliminary relief, discovery, confidentiality, striking claims, and summary judgment. Last, we will discuss perhaps the most revolutionary form of litigation to emerge in the last century—class proceedings, which provide a means of addressing certain harms for which conventional litigation is inappropriate. Our focus will be on the rationales for the rules, standards, and doctrines that govern legal procedure, in light of the various interests that must be accommodated: the plaintiff's desire to be heard, the defendant's wish to avoid needless litigation, the efforts of non-parties to have their interests represented, the needs of potential future litigants to have the law clearly set out on the basis of accurate information, and the public's demand for an effective and efficient system. These demands cannot all be easily accommodated at the same time. We will discuss the rationales for the current system and the potential for reform.

**2. READING MATERIALS AND ASSIGNMENTS**

Readings are available in a printed course pack (from the bookstore) and on the course blackboard site, under "course documents." You must self-enroll on the blackboard site to gain access, and you must ensure that you have used your **utoronto.ca** email address when registering on ROSI, or you will not receive any emails that I send from the blackboard site. *Note*: a few readings (such as *Ogden*) are *only* on blackboard and are *not* in the reader, so be sure to consult the reading list on the syllabus.

**3. EVALUATION**

The evaluation for this course consists of regular class attendance and participation (10%), and a two-hour final examination (90% of the final mark). I will also assign an essay, to be completed in advance and turned in with the exam. It will be part of the final exam and will be worth 25% of the mark.

**4. CLASS PARTICIPATION**

I will use a modified "on-call" policy, which will require 3 or 4 students to be "on call" on each day. Your participation mark will be based entirely on your response when you are on call. If you cannot be present on the date when you are to be on call, please let me know in advance. Otherwise, your participation mark will be reduced to 0.



## 5. OFFICE HOURS / MEETING OUTSIDE OF CLASS

I am happy to meet with you in my office. If you would like to see me during office hours, please make an appointment with my assistant, Nancy Bueler, whom you may contact at [nancy.bueler@utoronto.ca](mailto:nancy.bueler@utoronto.ca). If you *cannot* make it during my regular office hours, she will try to find another time. You should contact her several days in advance, as you may not receive an answer to your email immediately.

I am also happy to get together with groups of 4-6 students in a more casual atmosphere for lunch or coffee, to get to know you better and to discuss civil procedure, law school in general, or related matters (such as your summer plans). I will try to set aside a day each week at lunch time for this purpose and will give out a list of dates. If you are interested, send an e-mail to Nancy Bueler and she will get you signed up. If you cannot make any of the available dates, she will try to find another convenient time.

## B. COURSE OUTLINE

### 1. INTRODUCTION TO PROCESS AND THE COMMON LAW SYSTEM OF CIVIL JUSTICE

#### Course Introduction & Mechanics of Process

Junius Jessel Burke, *Letters to a Law Student* (Toronto: Carswell & Co., 1887), 20-21

Paul Carrington, "Of Law and the River" (1984), 31 J. Legal Educ. 222

Chart of the Canadian Court System

Chart of the Ontario Court System

Civil Litigation Flow Chart

History of Pleading

Rules of Civil Procedure, Rules 14, 26-29, 38 (skim)

#### *Optional (on blackboard)*

Nancy A. Welsh, "Perceptions of Fairness," in A.K. Schneider & C. Honeyman, eds.,  
*The Negotiator's Fieldbook* (Am. Bar Ass'n, 2006), 165, 169-70, 173-74

Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning*  
(Harvard U.P., 2009), Intro. & Chap. 2

## **II. The Threshold of Litigation: Parties, Standing, Claims**

### II.1. Who Can Litigate: Justiciability, Standing, *Amici Curiae* & Intervention

#### A. Justiciability

*Black v. Canada (Prime Minister)* (2001), 54 O.R. (3d) 215 (C.A.)

#### B. Standing:

Conventional Standing Problems (*Papageorgiou, Chender, Sask. Wheat Pool*)

(on blackboard): Medical Ghostwriting as a Standing Problem

*Canadian Council of Churches v. Canada*, [1992] 1 S.C.R. 236

#### *Optional (on blackboard)*

*Sierra Club v. Morton*, 405 U.S. 727 (1972)

#### C. *Amici* & Intervention

Rules of Civil Procedure, Rule 13

*Incredible Electronics Inc. v. Canada (A.G.)*, [2002] O.J. no. 4149 (S.C.J.)

### II.2. When to Litigate: Limitation Periods

*Limitations Act*, 2002, S.O. 2002, c. 24, Sch. B

*Novak v. Bond*, [1999] 1 S.C.R. 808

*Hare v. Hare* (2006), 83 O.R. (3d) 766 (C.A.)

*York Condo. Corp. No. 382 v. Jay-M Holdings Ltd.* (2007), 84 O.R. (3d) 414 (C.A.)

Optional (on blackboard)

“Ontario man loses fight with Liz Taylor for van Gogh painting,” CBC Arts (May 19, 2007)

### **II.3. How Many Times? Res Judicata**

*Grandview v. Doering*, [1976] 2 S.C.R. 621

*Hoque v. Montreal Trust Co. of Canada* (1997), 162 N.S.R. (2d) 321

*Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77

*Danyluk v. Ainsworth*, [2001] 2 S.C.R. 460

Optional (on blackboard)

*Penner v. Niagara Regional Police Svcs. Bd.*, (2010) 102 O.R. (3d) 700 [now pending SCC judgment]

*R. v. Mahalingan*, [2008] 3 S.C.R. 316

Double Jeopardy and Fracture

## **III. Strategic Interaction in Litigation: Jurisdiction, Preliminary Relief, Discovery**

### **III.1 Where to Litigate: Jurisdiction and Forum Non Conveniens**

Rule 16 (skim)

Rule 17

*Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077

*Van Breda v. Village Resorts Ltd* (2010), 98 O.R. (3d) 721 (C.A.)

*Disney Enterprises Inc. v. Click Enterprises Inc.* (2006), 267 D.L.R. (4th) 291 (Ont. S.C.J.)

Optional (on blackboard)

*Maharonee of Baroda v. Wildenstein*, [1972] 2 All E.R. 689

*Mynerich v. Hampton Inns Inc.*, [2008] O.J. No. 1290 (SJC)

*Schreiber v. Mulrone*y (2007), 88 O.R. (3d) 949 (Sup. Ct.)

*Paulsson v. Cooper*, (2011) 80 C.C.L.T. (3d) 52 (Ont. C.A.)

*Black v. Breeden*

### **III.2. Injunctions**

Rule 40

*Anne of Green Gables Licensing. v. Avonlea Traditions.*, [2000] 6 C.P.R. (4th) 57 (Ont. C. A.)

*Tornado ACS Canada Corp. v. Living Water (Pressure Wash Services) Ltd.*, 2010 ONSC 3001

Optional (on blackboard)

*Aetna Financial Services Ltd. v. Feigelman*, [1985] 1 S.C.R. 2

*Celanese Canada Inc. v. Murray Demolition Corp.*, [2006] 2 S.C.R. 189

*RJR — MacDonald Inc. v. Canada*, [1994] 1 S.C.R. 311

### **III.3 Discovery; Privilege and Confidentiality**

Rules 30-31, 34 (skim)

Conventional Discovery Issues (*Grossman, McCarthy Tétrault, Waugh*)

*Blank v. Canada (Minister of Justice)*, [2006] S.C.J. No. 39

*Chancey v. Dharhadi*, [2007] O.J. No. 2852

Optional (on blackboard)

*R. v. Stinchcombe*, [1991] 3 S.C.R. 326

Double Jeopardy and Fracture

### III.4 Striking Claims & Summary Judgment

Rules 20 & 21

Rule 37 (skim)

*Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764

### IV. Class Actions, Group Rights

Kenneth E. Scott, Two Models of the Civil Process (1975) 37 Stan. L. Rev. 937

*Class Proceedings Act, 1992*

U.S. Federal Rule of Civil Procedure 23

Contingent Fee Agreement

Notice of Certificate of Approval of Class Action Settlement

*Hollick v. Toronto (City)*, [2001] 3 S.C.R. 158

*Cloud et al. v. Canada (A.G.)* (2005), 73 O.R. (3d) 401 (C.A.)

*Cassano v. T.D. Bank* (2007), 87 O.R. (3d) 401 (C.A.) (Winkler, C.J.O.)

*Harris v. GlaxoSmithKline* (2010), 101 O.R. (3d) 665 (Sup. Ct. J.)

*Optional (on blackboard; not in the reader)*

*Cassano Statements of Claim & Defense*

*Western Canadian Shopping Centres, Inc. v. Dutton*, [2001] 2 S.C.R. 534

*Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974)

*Markson v. MBNA Canada Bank* (2007), 85 O.R. (3d) 321 (C.A.)

Makin, "Class-Action Suits Explode Into National Phenomenon," *Globe & Mail*, 19 July 2003



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 (Harvard U.P., 2009), Intro. & Chap. 2  
 Felstiner, Abel & Sarat, "The Emergence and Transformation of Disputes: Naming,  
 Blaming, Claiming . . ." (1981) 15 Law & Society Rev. 631  
 Marc Galanter, "Why the 'Haves' Come out Ahead: Speculations on the Limits of  
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